

# STATUTORY PROBLEMS

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Local school authorities act in the administration of public schools as agents of the state. There is almost always a constitutional mandate on the state to provide educational opportunities for its children. To implement constitutional provisions, state legislatures have enacted school laws. These school laws create state regulatory bodies and local administrative agencies. These school laws establish, or permit the establishment of, local school units which have limited powers of administration.

Each of the preceding articles has approached the jurisdiction over pupils from a specific point of view. Explicit or implicit in each article are problems that have been or could have been solved by statute. Statutory solutions of some of these problems have been more or less adequate in meeting needs at the time of enactment, although not all these statutory solutions have been brought up to date to meet current conditions. Nor have all legislative measures solved the problems they were intended to anticipate.

Solution of other problems has not been attempted by legislation; in fact, it is even debatable whether or not statutes should be specifically aimed toward the solution of certain kinds of problems. It can be strongly argued that regulations promulgated under general statutory authorization can provide more fluid and more particularized answers to many questions arising in the jurisdiction over pupils. Administratively, the regulation of public school pupils is a local problem; legally, it is a state problem as well.

Local school districts are usually incorporated legal entities with local powers specifically granted or necessarily implied for the conduct of their duties. In a particular matter, no power exists at the local level unless the power has been granted by the state. Neither a specific nor a general power can be extended beyond a reasonable interpretation of the grant of that power. Although legislation, general or specific, must cover every exercise of power desired in the administrative jurisdiction over pupils, this principle does not curtail school administrators as much as some think. It merely clarifies their position. School administrators who shrink from this philosophy may be soothed by an understanding of the different kinds of legislation describing their authority.

## I

### KINDS OF STATUTES AND THE EFFECTS OF EACH

Mention has been made of general and specific powers, of legislation granting specific powers, and legislation granting general powers from which specific powers may be implied. Further classification is desirable.

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Statutory authority, be it specific or general, may give state and local school administrators considerable discretionary power. On the other hand, legislation, be it specific or general, may prescribe the exercise of a duty, leaving state and local school administrators ministerial power only. Laws range between the extremes of wide opportunity for school administrators to exercise subjective choice and of no free choice. Laws also sometimes grant opportunity for pupils and their parents to exercise subjective choice.

Many school laws constitute a delegation of authority to state and local school administrators. It is unconstitutional for a legislature to delegate its power to make laws, but it is proper for a legislature to prescribe fundamental principles and to confer upon its agents the authority to implement these principles by the procedure prescribed legislatively. One type of statute gives rule-making powers to state and local school administrators. Interpretation of statutory provisions and the local elaboration of regulations promulgated by state school officers are included in this category. Rule-making power may include considerable discretion at the state or local level; local rules may be merely a more concrete implementation of state statutes and regulations.

Another type of statute may be called "contingent legislation." The legislature lays out the pattern on the basis of policy and makes its actual operation dependent upon future contingencies. Contingent legislation delegates to others the power to determine whether or not a condition exists and imposes upon them the duty to put the statute into effect upon a finding of the existence of the specified conditions. The statutory controls go into effect upon the existence of certain conditions, but the finding of those conditions devolves upon school administrators at the state or local level.

Rule-making authority, contingent legislation, discretionary powers, or prescriptive duties may be either general or specific with regard to the many aspects of jurisdiction over pupils. Categories of statutes are not necessarily mutually exclusive, but all must be constitutional. None can infringe upon the provisions of the state or Federal Constitution. Each should be consistent with other laws of the same jurisdiction.

State and local regulations implementing state statutes have the same characteristics: they must be constitutional; they may be general or specific; they should be consistent among themselves and with pertinent state legislation. They may impose a duty or grant a discretionary power to subordinate school administrators, to classroom teachers, and to pupils.

The legislature may rely upon state school officers to prescribe regulations in certain matters and in other matters may by-pass the state administrative body and delegate the authority to local school administrators. In either case rules and regulations promulgated under statutory authorization have the force and effect of law within the scope of the authority granted. State school officers may promulgate rules and regulations in general terms leaving specific implementation thereof to

local school administrators. These state rules and regulations may be any of the types suggested for the classification of statutes, provided the state school authority has acted within the power delegated to it by the legislature. For example, state board of education rules may block out a pattern to be followed locally only if the local school authorities find designated conditions—contingent regulations.

## II

### STATUTORY VERSUS REGULATORY PROVISIONS

School laws enacted by the legislators of some states are detailed. In other states the legislators enact only general patterns and authorize state and local school authorities to fill in the details. In the majority of states, there are some laws of both descriptions. What are the relative merits of placing details in state legislation as against the legislative delegation of authority for working out details by school administrators at the state or local level?

When the legislature freezes details into a statute, it is more certain that its intent will be understood. Yet, it is possible that the resulting legislation is more subject to error. Unless advised by state and local schoolmen, legislators may include unworkable details. When detailed legislation goes into effect, school administrators may be forced to choose between evading the letter of the law and defeating the intent of the legislature. Everyday affairs may not fit into the detailed state legislation and school administrators then have their hands tied. For these reasons some argue that school administrators, both state and local, being closer to their problems, should be left free by legislators to meet their difficulties. Also, changing conditions can be met more easily if details are left to regulation instead of requiring amendment of a statute. Contrariwise, if educators fail to meet their problems through unwillingness or inability, legislators may feel impelled to enact detailed prescriptions.

Current statutory problems in the administrative jurisdiction over pupils may be solved in some instances by the deletion from current law of undesirable legislative detail, in other instances by inclusion of greater detail. This is to say that some school laws may be too specific and others too general. The suggestion may apply differently in some states than in others, depending upon the caliber of the legislators and the educators. What may be handled best by school officers in one state may need to be prescribed by legislators in another state—and for good reasons.

Also, the different phases of the jurisdiction over pupils may be subject to regulation or to legislation depending upon their nature. In some areas the legislators may feel that the state's responsibility necessitates prescriptions; in other areas, the same state may feel that the variety of local conditions necessitates granting discretionary powers to local school administrators. In some areas the legislature may prefer to enact details it considers essential; in other areas the legislature may agree that a statement of general policy is sufficient. Under any of these circumstances,

the language of the statute or the rule or regulation must be clear and not ambiguous.

The foregoing generalizations concerning statutory problems in the jurisdiction over pupils may be illustrated by reference to the specific areas discussed in the preceding articles, the first of which is admission requirements.

### III

#### ADMISSION REQUIREMENTS

Age and residence are the most common statutory qualifications for admission to the public schools. Even when a minimum age for free public school attendance is stated in the constitution, legislatures have been held to have discretionary power to admit children under the minimum age.<sup>1</sup> Although constitutional age limits do not imply a prohibition on the legislative admission of those outside those limits, legislation widening the constitutional range of free public school education creates questions that could be avoided if the constitutional and statutory provisions were consistent. Since the scope of public school education has broadened considerably in recent years and since constitutional changes are made infrequently, naming specific age limits by constitutional provision may be unwise.

Legislators, themselves, have enacted inconsistent statutes with regard to age for admission to the public schools. At one point they name minimum and maximum ages for admission and at other points they enable local districts to maintain kindergartens and nursery schools, junior colleges, and adult education classes. In lieu of arbitrary age limits, legislation regarding the age groups to which public school education is to be made available could fix a minimum range; legislation could direct that public school opportunities be made available at least for those between designated ages. A statute of this nature would prescribe a ministerial duty and grant a discretionary power to be exercised by state or local regulations of school officers. Possibly, free schooling outside the minimum age range should be a matter for contingent legislation—depending upon financial ability, need in terms of population, and the wishes of the residents.

Whatever statutory provisions are made, however, the problem remains of how stated limits affect children whose birthdays fall within a school term. Statewide prescriptions might well be deleted, especially at the lower end of the age range. If classes are overcrowded in a particular school district, local school administrators should have authority to refuse admission to children who are not the minimum age on the date the school term opens. On the other hand, it would be unreasonable to exclude a pupil who reaches the maximum age before the end of the term in which his birthday occurs, or to charge him tuition for the balance of the term.

<sup>1</sup> E.g., *City of Manitowoc v. Town of Manitowoc Rapids*, 231 Wis. 94, 285 N.W. 403 (1939); *State ex rel. Shineman v. Board of Education*, 152 Neb. 644, 42 N.W.2d 168 (1950).

State laws and regulations should clarify these particular problems in general terms, stating policy only and allowing considerable discretion at the local level.

The residence requirement for school admission may exemplify the type of administrative jurisdiction that should be spelled out in the law or state regulations. Discretionary authority at the local level is subject to abuse. Some school boards permit attendance of children who live temporarily in a district to which they have moved for the sole purpose of attending a particular school; others require permanent residence. Some exclude nonresidents because the space and facilities are needed for their own resident children, while others allow the use of space and facilities by nonresidents provided they pay tuition therefor. The situation is made more inconsistent because these decisions are not always made under general rules and regulations but instead are made in each individual case. Existing state laws are not sufficiently specific in defining school residence.

Admission to the public schools is not an absolute right; it is a privilege. A child must meet admission qualifications and these may go further than residence and age. Health requirements are valid. Vaccinations are ordinarily required but many school systems also require a general physical examination. These requirements have been upheld.<sup>2</sup> Health standards differ considerably from one school district to another, and from one examining physician to another. In some districts there is no such requirement for admission. Should this area be left to local discretion?

The interest of the state in a healthy school population and its police power for the general welfare of its residents would seem to suggest that state law should specifically require local school administrators to have pupils examined as to their physical condition and should fix minimum standards for such examinations. Probably the details should be left to state regulation so that the state school authorities can devise ways and means and set up standards with the advice of the state public health authorities. Local variations in certain basic essentials of health cannot be justified in view of the mobility of our population.

On the other hand, full local discretionary power should be given to local school administrators to assign pupils to particular schools and grades, according to the convenience of the school system as a whole and the maturity of the pupils. In most states, local school administrators have the power of assignment, implied if not expressed. Yet, occasionally parents go to court to attempt to compel the admission of their children to a particular school. Laws that permit this unnecessary litigation must lack something. Legislation could make the grant of power of assignment more explicit and deny parents the right to take action against school authorities on the basis of assignment decisions unless a constitutional right has been violated. Such a law would clarify the power of local school administrators by transferring an implied power to the category of expressed powers.

<sup>2</sup> *E.g.*, *Streich v. Board of Education*, 34 S.D. 169, 147 N.W. 779 (1914).

## IV

## COMPULSORY ATTENDANCE

Statutory problems presented by compulsory attendance laws rest largely upon weaknesses found in their exceptions. Not all permitted exceptions are justifiable, especially today. Many existing compulsory attendance laws were drafted years ago and have not been amended to coincide with modern-day school organization and current economic conditions. Some laws permit children to leave school upon completion of a minimum level of instruction, regardless of individual capacity to learn. When this minimum is grade VI, grade VIII, or even grades IX or X, the goal is low for today's standards. Some laws permit children to leave school when they have completed the grades in the attendance area of their residence. This also is unjustifiable in the light of today's trend toward consolidated schools. Distance between home and school, without transportation facilities, is another outmoded exception to compulsory attendance laws. Roads and pupil transportation facilities make these provisions obsolete.

Compulsory school attendance requirements can be met by attendance at a private school; the state cannot compel children to attend the public schools.<sup>3</sup> Therefore, some degree of supervision over private schools should be enforced by the state to assure that private school education is substantially equivalent to the public school education offered children of compulsory school age. The right of a parent to send his children to a private school is not a weakness of compulsory attendance laws; but weakness lies in lack of state supervision over education of children not attending the schools established by the state.

State school officers in most states have a degree of control over private schools under existing law, but few exercise the authority that is theirs. Many school officers feel that they are without the power or that the law does not give them adequate authority. Some question the constitutionality of legislation that would permit or require state control of private schools, especially those maintained under the auspices of sectarian groups. It must be remembered, however, that the education of youth is a legal responsibility of the state and that the state has therein a right to prescribe minimum standards for the education of all its future electorate, even though parents have the right to send their children to the schools of their choice for sectarian or other training not included in the public school program.

Many compulsory attendance laws permit "home instruction," some without any qualification. Home instruction may be a necessary exception implied in the ruling of the Supreme Court of the United States when it said that requiring attendance of children at public schools would be an unlawful interference with the free choice of parents to direct the education of their children.<sup>4</sup> However, home instruction should not be permitted unless it is equivalent to public school education. Whether or not any home instruction can be equivalent to public school education is debatable,

<sup>3</sup> *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

<sup>4</sup> *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925).

but, aside from the experience and training in group living, equality should be required at least in regard to textbooks, curriculum, and the teaching ability of the home instructor. With special schools for handicapped and gifted children, the need for home instruction no longer exists in most instances.

## V

### PUPIL TRANSPORTATION

Transportation laws offer their own problems. Few current pupil transportation laws prescribe when pupils are to be transported. Usually local school administrators have discretionary power in deciding when to furnish transportation. Although there is a minority rule to the contrary, the prevailing judicial opinion is that a school district has no power to transport pupils without statutory authorization.<sup>5</sup> Some laws require transportation for pupils who live a specified distance from school and permit or are silent with regard to other pupils; some laws are mandatory for certain schools and are permissive or silent with regard to others. Some laws are permissive in their entirety or delegate decisive authority to state school officers.

Numerous questions must then be answered by judicial interpretation. May a district transport its pupils when it is of a type not specifically named in the transportation law? May a district authorized to transport certain pupils extend its program to include other pupils not specifically named in the law? May a district transport pupils outside the geographical area of its boundaries? May school buses be used to transport pupils to extracurricular activities? Too few pupil transportation laws answer these questions.

The circumstances under which pupils *must* be transported and the circumstances under which the school district *may* provide free transportation in the exercise of its discretion should be identified in the law. Distance qualifications, although the most common, are not necessarily the most advisable. Several states provide transportation when a pupil lives "an unreasonable distance" from school. Interpretation of what distance a child could reasonably be compelled to walk to school is uncertain; it would depend upon many factors, including the age of the child and the condition of the road. A Kentucky court took the position that a short but unsafe distance is an unreasonable distance,<sup>6</sup> suggesting that possibly the ideal law might require transportation of pupils over short but dangerous roads and over long distances regardless of their safety.

National school bus standards have been adopted in about three-fourths of the states, usually by state board regulation. Before this trend began, the courts refused parents the right to demand safe equipment, under the theory that furnishing transportation equipment was within the discretionary power of the local school district.<sup>7</sup>

<sup>5</sup> *Shanklin v. Boyd*, 146 Ky. 460, 142 S.W. 1041 (1912). *Contra*, *Williams v. Board of Public Instruction*, 133 Fla. 624, 182 So. 837 (1938).

<sup>6</sup> *Schmidt v. Payne*, 304 Ky. 58, 199 S.W.2d 990 (1947).

<sup>7</sup> *Greenlee v. Newton School Township*, 55 Ind. App. 630, 104 N.E. 610 (1914).

The same theory would apply today in states that have not adopted standards for safe equipment.

Actually pupil injuries in connection with the transportation program have usually occurred outside the school bus—for example, when a child crosses the street or road after leaving the bus. However, because of the fear that transportation might cause pupil injuries, many school districts carry liability insurance. There is probably no area wherein statutory problems abound to a greater degree.

In the first place, a distinction must be made between publicly owned and privately owned school buses. In the second place, distinctions must be made among different types of insurance. Fire-theft and collision insurance on publicly owned buses are related to the school board's duty to preserve school property. That duty does not carry over to privately owned buses. Property insurance and liability insurance bring into the discussion the governmental immunity of most school districts. The common law rule denies the board power to insure against a non-existent liability for personal or property damage. Finally, confusion exists because some laws require insurance; others authorize it; some declare that carrying insurance does not waive the immunity of the school district; some state that failure to carry authorized insurance does not impute liability; and some laws forbid carrying insurance. In any of these instances, the law may refer generally to "insurance" or may be specific with regard to kinds of insurance required or authorized. The result is that school funds have been used for the purchase of insurance that provides no protection.

The state is interested in protecting its pupils from transportation injuries and also in preserving the property it or its agents own. The state, therefore, should clarify the complex situation that has arisen out of the carrying of school-bus insurance. Governmental immunity can be waived to the extent of the amount of insurance carried; permission can be granted the injured to sue the school board for the purpose of determining the amount of damages that are compensable by the insurer. Unless either of these or some better solution is adopted, the problem remains unsolved because the insured has no guarantee that the insurer will pay a claim that cannot be settled out of court. There has been strong objection to the abrogation of governmental immunity. Several states have avoided this difficulty by establishing state claims boards with power to adjudicate and pay claims resulting from expenses incurred because of pupil transportation injuries.

It would not be fitting here to express personal preference for any one of these solutions; it is, however, appropriate to point out the need for the adoption of some kind of solution. The extent of the current confusion may be illustrated by the law of one state that requires the school district to use public school funds to purchase collision insurance on privately owned school buses (thus preserving private property) but forbids the school district to carry liability insurance on publicly owned school buses because of governmental immunity.



## VI

### LIABILITY FOR PUPIL INJURIES IN GENERAL

Much less confusion exists with regard to the school district's liability for pupil injuries sustained in other than transportation accidents. Only California and Washington, for designated kinds of cases, have abrogated their immunity; several other states have authorized the use of school funds to reimburse teachers and certain other agents of the school board for damages they are required to pay. The latter are the "save harmless" laws that do not abrogate the district's governmental immunity. "Safe place" statutes and other laws that would appear to impose liability on school boards are strictly construed by the courts. The rule of governmental immunity remains generally throughout the country. Although liability insurance is frequently carried by groups of school employees and occasionally statutory authorization has been given for the use of school funds to pay part or all of the premiums for this insurance, no statutory ambiguity results.

Of course, teachers are frequently confused by the principles of the law of negligence applicable to them individually. These principles rest on common law precedents. It would be difficult to write them into the statutes; possibly doing so would create rather than dispel confusion.

## VII

### DISCIPLINE

Another area in the administrative jurisdiction over pupils also rests largely on the common law—namely, the right of teachers to punish pupils. Under common law the teacher has the legal status of a conditionally privileged person standing *in loco parentis*. The teacher is privileged to certain actions under certain circumstances and for certain purposes. This privilege includes physical chastisement or other forms of punishment for the purpose of enforcing discipline, unless forbidden by statutory or regulatory measures.

Few school laws deal specifically with corporal punishment of pupils. Under common law the punishment must be reasonable, not excessive or malicious, and given in a proper manner. Almost all states have general laws forbidding cruelty to children. School boards frequently announce local rules and regulations that forbid corporal punishment or declare how it is to be administered. Many states sanction moderate and reasonable punishment through the definition of assault and battery in the penal code with a proviso that restraint and correction of a child by a teacher shall not be considered assault and battery. These provisions in the penal code preclude criminal action unless the punishment be excessive or unreasonable, but do not affect a right to civil action against a teacher for damages in the event damages have been incurred. Of course, a teacher who punishes a child in contradiction to state or local regulations forbidding such punishment is subject to dismissal for violation of the rule.

Since so few school administrators and teachers understand the distinctions between criminal and civil actions for assault and battery, since the common law principles are usually unknown to the school staff, and since general laws are seldom read by educators, silence of the school laws on this subject leaves many unanswered questions. Ambiguities need not exist. School laws should include provisions describing when and how corporal punishment may be administered or forbidding corporal punishment entirely or except under designated circumstances. This matter should not be left to the teacher's individual judgment, or even to the discretion of the principal of a school building or the administrator of a school system. Differences that have arisen from one school district to another within the same state and even from one school to another in some school districts leave teachers and pupils confused as to their rights.

School laws are clear as to other forms of punishment. They declare definitely who may suspend pupils and for how long; who may expel pupils and for what reasons. Usually these laws refer generally to incorrigible children, but many are specific with regard to the causes for suspension and expulsion. The two most controversial causes for disciplining pupils in the past few years have been membership in secret societies and refusal to salute the flag.

Even though the Supreme Court of the United States has said that demanding the flag salute of children whose religious belief did not approve this ceremony was a violation of religious freedom guaranteed by the Federal Constitution, many states have continued such a requirement on their statute books. One statutory problem that has been implied several times in preceding paragraphs is the difficulty of removing obsolete school laws. That a state or a local school board has the legal duty to follow precepts laid down by the highest court in the land is axiomatic. Yet, so long as contrary statutes remain on the books, some people will attempt to follow those statutory provisions, believing them to be valid.

## VIII

### CURRICULUM

Many of the statutory problems are raised because patrons, school boards, and school personnel do not know the law. A perplexing and contradictory case arose some years ago when a school board attempted to dismiss a teacher for failure to teach physiology and hygiene in accordance with the law, when the teacher was following the state-adopted syllabus.<sup>8</sup> The basic course of study is often prescribed by the state board of education; a few states write into law prescriptions of questionable wisdom. No one would quarrel with legislators who wish to require the teaching of a subject they considered essential, such as physiology and hygiene, but the grade level and the amount of time to be devoted thereto should be left to the discretion of educators. Curriculum prescriptions in many school laws are too detailed.

A few states have enacted contingent legislation in the area of subject matter

<sup>8</sup> *Prevey v. School District No. 6, Cannon Township*, 263 Mich. 622, 249 N.W. 15 (1933).

that is to be taught. For example, if a designated number of parents petition the school board to inaugurate a course in a particular subject, the school board is required by law to grant the petition. Such a law creates for a school board financial and administrative problems and destroys its discretionary power to offer a curriculum for the greatest good of the greatest number of pupils attending its schools.

Obviously local school administrators cannot violate state prescriptions. The state has the power to fix a minimum course of study. The legislature may take this step itself but usually it delegates this duty to the state board of education. Local school administrators have the power to add to the state minimum program, but they cannot omit from the curriculum what has been fixed as a requirement at the state level.

The state also has the power to forbid the teaching of certain subjects in the public schools. Parents who wish their children taught subjects not included in the public school curriculum have the right to send their children to private schools for such instruction. Thus, there is no invasion of the parents' authority over the pupils, while at the same time the state maintains control of the essentials in which it wishes its future citizens to be educated.

Few controversies have arisen with regard to curriculum matters outside the scope of religious education. This problem has many facets.

First, there is the common practice of having opening exercises. Some states permit or require that several verses from the Bible be read on each school day; several also include reciting the Lord's Prayer. The Federal Constitution requires separation of church and state; state constitutions usually prohibit use of school funds for sectarian education. Are opening exercises sectarian education? Although the Supreme Court of the United States has not ruled on this question, many state courts have held that the Bible is not a sectarian book and reading from it without comment is not unconstitutional.

In a few instances, however, pupils attending the public schools have been subjected to opening exercises in which certain ritualistic features have been added by individual members of the school staff. Such exercises are invalid because they follow the form of worship of a particular church. Pupils and their parents have a right to object under these circumstances.

On the other hand, nothing in the principle of the separation of church and state prevents public school training in moral and spiritual values. Teachers give considerable thought to the spiritual side of the children in their care. Public school pupils learn to live together, to tolerate and understand differences in beliefs on many subjects; consciously or unconsciously they learn ideals of family and society in a democracy. Few, if any, educators would call this training religious education. However, religious education, like religion itself, means different things to different persons. Religious education in the public schools is unconstitutional. But, what is religious education?

To some there can be no religion disassociated from the supernatural as interpreted in the doctrines of churches. These persons accept moral principles as a part of religious doctrine but, in their opinion, when separated from doctrine, the principles become merely a system of ethics. Others believe that there are a number of universal "spiritual values," broader and deeper than ethics, but not necessarily associated with the doctrines of any particular church. Those who think this way also believe that these spiritual values can be taught without sectarian bias or interpretation.

The word "sectarian" itself has different meanings to different people. Some use it to mean the individual churches of the Protestant faith. Others apply the term in distinguishing between Christians and Jews, or among groups of Christianity—Protestant, Greek Catholic, or Roman Catholic. Secular education is sometimes considered completely devoid of spiritual values; to others the secular can include spiritual values, provided the instruction is not sectarian.

Therefore, the constitutional and statutory prohibitions against sectarian education in the public schools or the use of school funds for sectarian education are variously interpreted, depending upon the individual's philosophy of religion. No diversity of opinion appears with regard to instruction in comparative religion, or perhaps instruction on the contributions of religions to present democratic procedures—the place of religion in our cultural heritage. No controversy arises with regard to training in ethics through secular subjects and school activities that foster group understanding, teamwork, good will, and the protection of minority groups. The challenge arises when this kind of education deals with the dogma of religion.

Since religious education, as such, cannot be given in the public school curriculum, many schools excuse pupils from the regular school work for a period each week for religious instruction under the auspices of the churches. This is known as a released-time program. Many variations of this program are in operation in different schools. Many state laws authorize released-time programs but usually in general terms. Local school districts and sometimes administrators of individual school buildings plan implementation of the state authorization. Classes in religion may be held in church buildings or in school buildings; classes may be held during the school day or after school has been dismissed; the school staff may keep records of pupils' attendance at these classes in religion, or may not; pupils who do not attend the religious education classes may be required to devote the time to their regular school work or may be permitted to go home; choice of the church which the parents wish their children to attend may be made via school authorities or directly to the churches operating the classes; credit may be given toward graduation for attendance at classes in religion, or may not. Not all the many variations have been reviewed by the courts. Undoubtedly many schools are operating released-time programs that would be declared invalid if challenged judicially. Is it wise to permit local discretion in a matter involving a constitutional right?

State school laws should be more explicit with regard to what is or is not to be done by the public schools in the training of moral and spiritual values and in the avoidance of sectarian education. Such a law enacted by legislators, presumably after advice as to its constitutionality by the attorney general's office, needs to be tested only once in the courts to ascertain its validity. Perhaps that is one principle that could be set down in contemplating statutory problems in the jurisdiction over pupils—that, when a constitutional right is involved, the matter should not be left to local discretion.

#### CONCLUSION

Out of the foregoing discussion of the kinds of statutes governing the administration of the public schools, from the point of view of jurisdiction over pupils, and the discussion of certain aspects of the pupil's school life as illustrative of the statutory problems abounding in this area, it may be possible to conclude with a tentative statement of general principle.

Legislators should leave educational details to educators, stating only broad policies and delegating to state or local school administrators the power to fill in details that meet current needs. In implementing legislative policy, however, state and local school administrators must take cognizance of constitutional and statutory provisions, as well as pronouncements of the courts. When local abuse can be anticipated in a particular area, the legislature should draft its laws so as to minimize and, if possible, avoid local abuse. Especially when a constitutional right of a child is involved, the matter should not be left to local discretion because of the possibility of diverse interpretations of the scope of such a right.

Above all, school laws should be clear, consistent, and constitutional. If this were so, many of the current statutory problems would not exist.